

STATE BOARD TO REVIEW CLAIMS

MEETING OF SEPTEMBER 9, 2004

Videoconferenced in Carson City & Las Vegas, Nevada

ITEM

IV.A.

SUBJECT: Resolution to Deny Coverage to McCrosky's "Y" Service, Jct. Hwys 93 & 319, Panaca: State Facility #7-000046, Petroleum Fund Case ID #2004000045.

DISCUSSION: This site's name, originally McCrosky Brothers Inc., was changed to McCrosky's "Y" Service (McCrosky's) in 2004.

Records dating from 1986 indicate that the following five tanks were originally at this site:

- a) 12,000 gallon diesel AST
- b) 12,000 gallon gasoline AST
- c) 2,000 gallon gasoline UST
- d) 1,000 gallon gasoline UST
- e) 500 gallon diesel UST.

This resolution addresses only d) the 1,000 gallon gasoline and e) the 500 gallon diesel USTs which have been identified as the source of contamination.

An unsigned letter (Attachment "A") to the Nevada Division of Environmental Protection (NDEP) from McCrosky Brothers dated December 27, 1990 states that the two cited tanks were removed from service on November 28, 1990. It further states that they were scheduled to be filled with concrete but, due to bad weather, were left empty.

On December 31, 1990, NDEP received an EPA 7530-1 Form (Notification for Underground Storage Tanks) (Attachment "B") indicating that the two tanks had been filled with concrete on November 28, 1990. The form was signed by William McCrosky.

On January 7, 1991, NDEP sent a letter to McCrosky's indicating that documentation of proper closure of the two tanks as required by 40 CFR 280.71 to 280.74 had not been received. The letter requested analytical results for the soil samples taken and further information regarding whether the tanks were removed or closed in place.

On March 22, 1991, NDEP received a response from McCrosky's to the January 7th letter. It stated "no soil samples were taken, the tanks were closed in place by the owner but remained empty. The letter (Attachment "C") was signed by Robert McCrosky.

On August 22, 1991, 9 months after the tanks were closed, a Petroleum Fund invoice (Attachment "D") in the amount of \$250 was sent to McCrosky's. The invoice listed 2-12,000 gallon, 1-2,000 gallon, 1-1,000 gallon gasoline and 1-500 gallon diesel tank. The invoice was for Petroleum Fund enrollment for fiscal year 1992 (October 1, 1991 thru September 30, 1992). The invoice was in error in that it invoiced McCrosky's for the 1,000 gallon gasoline and the 500 gallon diesel tanks which were listed on the invoice as "Perm. Out of Use"

On September 16, 1991, a \$250 payment for fiscal year 1992 was received from McCrosky's along with the invoice. The database ("REVELATION") in use at the time indicates (Attachment "E") that because the two 12,000 gallon tanks were ASTs and because the 1,000 gallon gasoline tank and the 500 gallon diesel tank were "Perm. Out of Use", the \$50 per tank enrollment fee for fiscal year 1992 for these four tanks, a total of \$200 of the \$250 received was refunded to McCrosky Brothers. The date of the refund is not stated.

On June 28, 2004, NDEP received a letter (Attachment "F") and an Application for Coverage (Attachment "G") for the 1,000 gallon gasoline and the 500 gallon diesel USTs which were permanently closed by filling with sand in November 1990. The application identifies the two USTs as the source of contamination discovered at McCrosky's on May 19, 2004. The letter states "We do understand that we closed and sanded our USTs before they were enrolled in the Fund."

The conditions for registering a storage tank in the Petroleum Fund are stated in NAC 590.730 Annual registration of storage tanks; letters of coverage.

Storage tank is defined in NAC 590.710 (f.) as "'Storage tank' to mean any tank, including any connected pipes, used to contain an accumulation of petroleum. The term does not include any tank that is:

(3) Permanently closed in accordance with NAC 459.9972 and 40 C.F.R. § 280.71"

40 C.F.R. 280.71 (b) identifies one method of permanently closing a tank as "...filled with an inert solid material."

Accordingly, the two tanks for which Petroleum Fund coverage is being sought have been classified as "permanently closed" since 1990. The Petroleum Fund does not enroll tanks that have been permanently closed since they no longer meet the definition of "storage tank" pursuant to NAC 590.710 above.

RECOMMENDATION: **Adoption** of Resolution #2004-03 as Proposed, Denying Fund Coverage to the Subject Facility.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 2004-03

Resolution to Deny Petroleum Fund Coverage For McCrosky's "Y" Service
Jct. Hwys 93 & 319, Panaca
Petroleum Fund Case ID #2004000045
Facility ID #7-000046

Whereas, the State Board to Review Claims (hereinafter referred to as the Board) Finds:

1. The Board finds that storage tank is defined in NAC 590.710.
2. The Board finds that permanently closed tanks do not qualify as storage tanks as defined by NAC 590.710(3) which cites 40 CFR 280.71. 40 CFR 280.71(b) identifies one method of permanently closing a tank as "...filling with an inert solid material."
3. The Board finds that the 1,000-gallon gasoline UST and the 500-gallon diesel UST at McCrosky's were permanently closed by emptying and sanding in November 1990. Therefore, they leaked prior to November 1990.
4. The Board finds that the two USTs were never enrolled in the Petroleum Fund prior to their permanent closure in November 1990.
5. The Board finds that the two USTs cited in #3 above, identified as the source of the release, leaked during a period in which they were not enrolled in the Petroleum Fund.

THEREFORE BE IT RESOLVED:

1. The Board finds that a 1,000 gallon gasoline UST and a 500 gallon diesel UST located at the McCrosky's site were identified as the source of contamination discovered in May 2004.
2. The Board finds that storage tank is defined in NAC 590.710.
3. The Board finds that permanently closed tanks do not qualify as storage tanks as defined by NAC 590.710(3) which cites 40 CFR 280.71. 40 CFR 280.71(b) identifies one method of permanently closing a tank as "...filling with an inert solid material."
4. The Board finds that the 1,000 gallon gasoline UST and the 500 gallon diesel UST cited in #1 above were permanently closed by emptying and sanding in November 1990. Therefore, they leaked prior to November 1990.
5. The Board finds that the two USTs were never enrolled in the Petroleum Fund prior to their permanent closure in November 1990.

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6. The Board denies Fund coverage to the subject facility on the basis that the tanks identified as the source of the release leaked during a period in which they were not enrolled in the Petroleum Fund.

I, John Haycock, Chairman, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the Nevada State Board to Review Claims on September 9, 2004.

John Haycock, Chairman
State Board to Review Claims